THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No.12151 of 2001

ORDER:

1 This petition is filed seeking a direction to the second respondent to release an amount of Rs.2,30,000/- with interest at 18% p.a. payable to it by the second respondent.

2 Second respondent placed an order with the petitioner, a small scale industry established in 1977, for supply of 2000 tricycles at the cost of Rs.2,500/- each at staggered intervals to be supplied to the handicapped persons, free of cost, by the second respondent during Janmabhoomi programme. Accordingly petitioner supplied 2000 tricycles as per the specifications, for which no complaints were received from the second respondent. Yet, second respondent withheld an amount of Rs.2,30,000/- on the ground that it received a letter from the Sales Tax Officer, Janagaon, informing that petitioner failed to pay the sales tax on the goods sold to it. The case of the petitioner is that it was assured by the second respondent that it need not pay sales tax on the material supplied to the second respondent for Janmabhoomi programme and that no sales tax was collected from several other firms, which supplied tricycles during Janmabhoomi programme, and so withholding of Rs.2,30,000/- payable to it by the second respondent is unwarranted in view of the communication of the first respondent shown to him at the time of entering into the contract.

3 The Managing Director of the second respondent filed his counter affidavit on behalf of the second respondent inter alia contending that in view of section 61 of the Cooperative Societies Act

and the Industrial disputes Act, the Writ Petition is not maintainable, and as the price of Rs.2,500/- fixed includes all taxes and transportation charges payable by the petitioner and denied the allegation that he informed the petitioner that it need not pay sales tax, the amount payable by it to the petitioner towards sales tax was withheld by it at the request of the Commercial Tax Department and accordingly two cheques for Rs.2,27,273/- and Rs.3,000/- were sent to the Commercial Tax Department towards sales tax payable by the petitioner. The communication said to have been received by the petitioner has no statutory force and so second respondent need not act on it, and so the petitioner is not entitled to any relief.

4 The contention of the learned counsel for the petitioner is that since the Government, through fax message No.644/Plg.MLP/97 dated 03.07.1997 informed the second respondent that payment of sales tax etc., on all the works undertaken by the Government during Janmabhoomi programe are exempted, and as the second respondent had shown that message to the petitioner at the time of entering into contract, petitioner need not pay the sales tax on the items supplied by it to the second respondent during Janmabhoomi programme and so the second respondent is not entitled to deduct any amount towards sales tax from the amounts due to the petitioner more so because in respect of several other institutions which supplied the same product to the second respondent during Janmabhoomi programme they were not subjected to payment of sales tax, and as the order placed by the second respondent also does not show that the sales tax has to be paid by the petitioner.

5 There is no representation on behalf of the respondents.

6 The fax message dated 03.07.1997, copy of which was filed along with the petition, shows that the Government decided to exempt sales tax on all works taken up under Janmabhoomi programme. So it can be taken that the petitioner, at the time of entering into the contract was shown that communication, and was made to believe that it need not pay sales tax on the items supplied to the second respondent for Janmabhoomi programme. So second respondent is estopped from saying that inasmuch as that communication has no statutory force it is not bound by that communication. That apart, if sales tax payable by the petitioner to the Commercial Tax department is not paid, it is for the Commercial tax department to proceed against the petitioner, but the second respondent has no right to deduct or withhold any amount payable to the petitioner. Significantly second respondent did not dispute the averment that several other firms which supplied the same product to the second respondent during Janmabhoomi programme were not subjected to sales tax. Then why the second respondent though it fit to withhold the amount payable to the petitioner is not explained in the counter affidavit filed on behalf of the second respondent. In view thereof, withholding of the amount payable to the petitioner by the second respondent is improper.

7 The contention raised in the counter affidavit filed on behalf of the second respondent that this petition is not maintainable in view of the A.P. Cooperative Societies Act and the Industrial Disputes Act has no substance, because both those enactments do not provide any remedy for the grievance of the petitioner and so the petitioner cannot

get any relief under those enactments. As per the Cooperative Societies Act, arbitrator will have jurisdiction to entertain disputes between members and members of the Cooperative Society or disputes between a Cooperative society and its members. He cannot adjudicate disputes between a member of a Cooperative society and a third party who is not a member of the Cooperative society or a cooperative Society and its members. The dispute in this case is not between two members of a Cooperative society. Petitioner is a stranger to the second respondent. Industrial Disputes Act provides the remedy in case of disputes between employer and a workman as defined in that Act. There is no relationship of employer and workman between the petitioner and the respondents. So the procedure prescribed in that enactment cannot be invoked by the petitioner for obtaining the relief sought by him in this petition. So neither of the two enactments mentioned in the counter affidavit filed on behalf of the second respondent are a bar to the petitioner seeking relief in this Court under Article 226 of the Constitution of India for his grievance.

8 As withholding of the amount admittedly payable by the second respondent to the petitioner is unwarranted in view of the above stated reasons, this petition is allowed and the second respondent is directed to pay Rs.2,30,000/- to the petitioner with interest at 12% p.a. from the due date up to date of payment within a period of one month from the date of receipt of a copy of this order. No order as to costs.

C.Y.Somayajulu, J.

06.11.2007

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